

IN THE DISTRICT COURT OF GUAM

TERRITORY OF GUAM

* * *

FILED
DISTRICT COURT OF GUAM

NOV 30 2006 *mb*

MARY L.M. MORAN
CLERK OF COURT

9	UNITED STATES OF AMERICA,)	COURT OF APPEALS
)	CASE NO. 06-
10	Plaintiff,)	
)	
11	vs.)	CRIMINAL CASE
)	NO. CR01-00089
12	JOHNNY WU SU,)	
)	
13	Defendant.)	
	-----)	

TRANSCRIPT OF PROCEEDINGS

BEFORE

THE HONORABLE MORRISON C. ENGLAND, JR.

Designated District Judge

ORDER TO SHOW CAUSE HEARING/SENTENCING

WEDNESDAY, SEPTEMBER 27, 2006

ORIGINAL

Wanda M. Miles
Official Court Reporter
District Court of Guam

APPEARANCES:

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE
BY: FREDERICK A. BLACK, Esq.
ASSISTANT UNITED STATES ATTORNEY
Suite 500, Sirena Plaza
108 Hernan Cortez Avenue
Hagatna, Guam 96910

FOR THE DEFENDANT: CIVILLE & TANG
Attorneys At Law
BY: G. PATRICK CIVILLE, Esq.
330 Hernan Cortez Ave., #200
Hagatna, Guam 96910

1 HAGATNA, GUAM; WEDNESDAY, SEPTEMBER 27, 2006; 11:54

2 * * *

3 THE CLERK: Criminal case 00-00089, United
4 States of America versus Johnny Wu Su, continued
5 further proceedings on order to show cause why
6 supervised release conditions should not be revoked.

7 Counsel, please state your appearances.

8 MR. BLACK: Afternoon, Your Honor, Fred Black
9 for the government.

10 THE COURT: Good afternoon.

11 MR. CIVILLE: Morning, Your Honor, Patrick
12 Civille for Johnny Wu Su, and Mr. Su is present with
13 me.

14 THE COURT: Mr. Civille, you had indicated
15 earlier that you needed time to speak to your client.
16 Did you have that time?

17 MR. CIVILLE: I did go down and speak to him,
18 Your Honor. If I could have just one moment; Mr. Su
19 was considering a matter and he was going to let me
20 know as he came into the courtroom.

21 THE COURT: Go ahead.

22 (Pause.)

23 MR. CIVILLE: Your Honor -- (static).

24 Is that me? Sorry.

25 Your Honor, we are prepared to go forward.

Wanda M. Miles
Official Court Reporter

1 If I may, Your Honor, Mr. Su is prepared to
2 enter an admission today. He does have some matters
3 that he wants to bring to the court by way of
4 mitigation that we are not prepared to go forward on
5 today, and I don't know if it would be possible -- I'd
6 do it two ways. I can make a proffer of what those
7 matters would be, or ask the court to delay the actual
8 disposition, make the admission today, but delay the
9 disposition until Friday.

10 THE COURT: Can you give me a proffer as to
11 what those would be?

12 MR. CIVILLE: Your Honor, there's no doubt
13 that beginning in about May of this year, Mr. Su
14 entered into a period where he certainly regressed
15 and had some inappropriate behavior, engaged in
16 inappropriate behavior. Up until that time he had been
17 actually doing quite well.

18 And he had asked the court for an opportunity
19 -- he has, among other things, he is a graduate of the
20 University of Guam, he has a Bachelor's degree in
21 criminal justice. He is just shy of having actually a
22 Master's in criminal justice. He has also been taking
23 courses at Guam community college towards an automotive
24 technology degree and has a 4.0 average in that. He
25 has asked me to, and believes he can obtain letters

1 from his faculty members in those two colleges, to
2 attest to his hard work and diligence over the past few
3 years.

4 He has also been employed in two places, one a
5 sporting goods store and the other in the Salvation
6 Army Lighthouse Recovery program where he was actually
7 both a, at one point a client, and then a like a
8 resident manager or counsellor, and he believes he can
9 provide the court with information from those two
10 sources as to his good behavior, and progress up until
11 approximately May where he, he entered into a very bad
12 period.

13 THE COURT: All right. Mr. Black?

14 MR. BLACK: Yes, Your Honor. The government
15 would prefer to go forward with the whole matter today.
16 We would not object, in fact, we would even stipulate
17 to these things he's saying in terms of that he's
18 bright and that he did well at the school and those
19 things, so we see no reason to continue the sentencing.

20 What we'd like to hear from the defendant is
21 what he's prepared to admit to. And I think that the
22 best approach there would be to look at the
23 supplemental declaration in support of the petition,
24 the very last page of it, it lists all these different
25 violations. My understanding is that he's prepared to

1 admit to all of them.

2 THE COURT: Do you have a copy of that for me?
3 I don't seem to have one here.

4 (Pause.)

5 THE COURT: Thank you.

6 MR. BLACK: The very last page, Your Honor,
7 deals with sort of a chart. It shows the different
8 things, starts off with an arrest for disorderly
9 conduct, and then there's use of controlled substance,
10 and it goes from there.

11 My understanding is the defendant is prepared
12 to admit to everything on that list except for the two
13 matters involving the arrests. And the government was
14 not going to argue those matters, but he was going to
15 admit to all the Class C violations as well as to a
16 Class A violation, that's possession of a controlled
17 substance, that dealt with the ten grams of
18 methamphetamine found in his residence.

19 So, on that list, my understanding is he's
20 prepared to admit to everything except for the two
21 arrests, and as long as there's a Class A violation,
22 it gives the court maximum latitude without having to
23 deal with all of the matters that went into those
24 arrests and the state violations that may proceed
25 independently of this court.

1 THE COURT: So what is your client prepared to
2 admit to today?

3 MR. CIVILLE: Your Honor, Mr. Black has
4 correctly stated what my client will admit to. And
5 specifically, use of a controlled substance, on June
6 23rd, 2006 was a Class C violation, failure to submit
7 to substance abuse testing on June 29, 2006, July 10th,
8 13th, 18th and 25th, 2006, Class C violations, failure
9 to submit a complete and written report for June 26 as
10 a Class C violation, failure to notify the probation
11 officer within 72 hours of being arrested, a Class C
12 violation, and possession of a controlled substance, a
13 Class A violation.

14 THE COURT: Are you willing to stipulate to
15 the good conduct and progress of your client as
16 indicated by Mr. Black?

17 MR. CIVILLE: Yes, Your Honor.

18 THE COURT: All right, I will accept that
19 stipulation, that he has obtained a Bachelor's degree
20 in criminal justice, appears to be a few units short of
21 concluding a Master's degree in criminal justice, which
22 obviously will attest to the level of dedication and
23 intelligence to get that far in that particular field,
24 and that he has also currently enrolled in the Guam
25 Community College auto technology and currently has a

1 4.0. I would assume that's a 4.0 standard, so it would
2 be a straight A average in that particular course of
3 study as well.

4 So the court does recognize that he does have
5 the ability to do what needs to be done, and have the
6 intelligence to understand what needs to be done as
7 well.

8 That stipulation is entered.

9 Is your client prepared to admit to the other
10 items that we just mentioned?

11 MR. CIVILLE: Yes, Your Honor.

12 THE COURT: All right. Mr. Su, a petition has
13 been filed in this matter alleging that you violated
14 the terms of your supervised release. Do you
15 understand what that petition is.

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Sorry?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: At this time I'm going to ask you
20 whether or not you engaged in conduct which violated
21 certain terms of your supervised release when you were
22 sentenced back on July 23rd, 2002 by Judge Unpingco; do
23 you remember that?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: All right. First of all, do you

1 admit or deny that you used a controlled substance on
2 June 23rd, 2006?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: You say I admit or deny; which is
5 it?

6 THE DEFENDANT: I admit.

7 THE COURT: Do you admit or deny that you
8 failed to submit to substance abuse testing on June
9 29th, July 10th, 13th, 18th and 25th, 2006?

10 THE DEFENDANT: I admit.

11 THE COURT: Do you admit or deny that you
12 failed to submit a complete written report for June of
13 2006?

14 THE DEFENDANT: (No response.)

15 MR. CIVILLE: Your Honor he's -- my client is
16 whispering to me. It was actually July that he missed,
17 not June. Probation is checking that.

18 THE COURT: But was July missed?

19 All right, I'll take that. Do you admit or
20 deny that you failed to complete a written report for
21 July, 2006?

22 THE DEFENDANT: Admit.

23 THE COURT: All right. Do you admit or deny
24 that you failed to notify the probation officer within
25 72 hours of being arrested?

1 THE DEFENDANT: Admit.

2 THE COURT: And do you admit or deny that you
3 possessed a controlled substance?

4 THE DEFENDANT: Admit.

5 THE COURT: All right. Counsel, will you
6 stipulate that's a factual basis for each of these
7 admissions?

8 MR. CIVILLE: Yes, Your Honor.

9 MR. BLACK: Yes, Your Honor.

10 THE COURT: All right, thank you.

11 Having heard the defendant admit to the
12 violations, and also there being a factual basis for
13 the admissions, it's been stipulated to here in open
14 court, I will find those admissions to be true, all of
15 them.

16 And we're ready to proceed with disposition?

17 MR. BLACK: Yes, Your Honor.

18 THE COURT: Mr. Civile, are you ready to
19 proceed?

20 MR. CIVILLE: Yes, Your Honor.

21 THE COURT: Do you wish to be heard on
22 disposition?

23 MR. CIVILLE: Yes, Your Honor. Your Honor, if
24 I may, I would ask that the government be permitted to
25 go forward. I think they have a recommendation that we

1 will support.

2 THE COURT: Go ahead, Mr. Black.

3 MR. BLACK: Yes, Your Honor. The government
4 is recommending a 30-month period of imprisonment,
5 followed by 66 months of supervised release. The
6 defendant has 96 months to go in terms of supervised
7 release. Whatever period of incarceration the court
8 imposes we would subtract that from the 96 months), and
9 that would leave the amount that would follow. The
10 government makes this recommendation because the
11 defendant is smart; he is capable, we hope, of
12 rehabilitating himself if he ever sets his mind to do
13 that. And has done, as counsel pointed out, some good
14 things when he was out, but definitely fell off the
15 wagon and appears to have fallen off substantially from
16 May forward with some very serious situations.

17 The reason that the government recommends the
18 30 months is that the total amount of prison time
19 hanging over this defendant's head is up to five years
20 imprisonment, and of course the court could impose up
21 to five years of imprisonment. But there would be a
22 benefit to the government in him having a period of
23 supervised release when he gets back out because I
24 think this individual needs to be closely monitored by
25 society when he gets out because of this repetitive

1 behavior in the criminal side. If he got back out and
2 he still had 30 months over his head, which would be
3 the amount that he would have left over his head if
4 he's sentenced today to 30 months, that would give a
5 degree of punishment next time around that would still
6 be available. It would subject him to 30 months at
7 this time, but then there would be 66 months left
8 available.

9 If the court goes higher than the 30 months,
10 it's less time that the court could impose a second
11 time around. And I'm hoping that there won't be a
12 second time around, but based on the pattern of this
13 defendant, going back to the original presentence
14 report when he apologized to the court and said it
15 would never happen again -- Well, it is happening
16 again. The question is just how much prison time to
17 give him at this time. The government recommends 30
18 months.

19 THE COURT: And 66 months of supervised
20 release?

21 MR. BLACK: Yes, Your Honor.

22 THE COURT: And I think that's very
23 appropriate, what you just said, that Mr. Su had said
24 originally this would never happen again and here it
25 has happened again. And at the time Judge Unpingco

1 sentenced him, he was given an 18-month downward
2 departure from his original sentence, and he let the
3 judge at that time believe that it wouldn't happen
4 again. So, I have taken that into consideration here
5 as well.

6 Mr. Civile?

7 MR. CIVILLE: Your Honor, for six years it
8 didn't happen again. Mr. Su was tested frequently
9 while on supervised release, he was tested I believe
10 six to eight times per month, on average, until this
11 summer, late spring-early summer, he had passed all of
12 his tests. My understanding is that he ran into -- he
13 had progressed very nicely, had gone through the
14 Lighthouse Recovery program, and done a very fine job
15 there. And had been made basically a semi-inmate
16 counsellor, sort of a patient counsellor, sort of
17 trustee. There was a new person, a manager who came
18 in that -- he and Mr. Su did not get along, and Mr. Su
19 was placed on administrative leave, and eventually
20 terminated.

21 And I'm sure Your Honor sees it all the time,
22 you have people come before you who are just studies
23 in contrasts. Mr. Su has been -- is obviously very
24 bright, as Mr. Black has pointed out, he's done very
25 well in school, seems to have a great deal of

1 potential, and at the same time he handles adversity
2 very poorly. Being turned out of the Lighthouse
3 program, being rejected by the Lighthouse program
4 apparently for reasons that aren't clear in the limited
5 information I have on him, triggered in Mr. Su just
6 this defeatist attitude, and it led to substance -- his
7 getting back and using ice again, testing positive for
8 drugs, and just going into a very rapid downward
9 spiral.

10 We would ask the court, I would ask Your Honor
11 to adopt the government's recommendation of 30 months.
12 I would think it is a significant period of time, but
13 still, and it provides the government a hammer over his
14 head that the government seeks once Mr. Su gets out of
15 prison. At the same time it also, I think, recognizes
16 the positive steps that Mr. Su had been making, and had
17 made really for over two years until this past summer.
18 And I think it holds out some hope for him that if he
19 can once again get control of whatever demons it is
20 that drive him, that he still has a chance once he gets
21 out to do something worthwhile with his life. And more
22 just as importantly, to live a free life.

23 THE COURT: All right. Thank you.

24 And is there anything else Mr. Su wants to say
25 before I pronounce sentence?

1 THE DEFENDANT: Your Honor, I'm sorry about
2 what happened. I let a lot of people down. (Pause.)
3 People that love and care about me. I didn't manage
4 myself well. And when I knew I needed help, I did call
5 my attorney, I sought advice what I should do, how I
6 can get help. And he recommended that I turn myself in
7 and I will be helped one way or another. And I
8 followed his advice, I self-surrendered.

9 And I would like, you know, I would like the
10 chance to, you know, get back to where I was when I
11 first was released. Because during that period of time
12 I lost my job, the mother of my children kicked me out
13 of the house, I just had a newborn baby, I wasn't able
14 to see my newborn baby. Kept that away from me. My
15 mother wouldn't allow me into the house because of what
16 happened. I had no family support, I had no financial
17 income, and somehow the only people that accepted me
18 were people that were of bad influence. I had to
19 realize that. And I do realize that. And when I
20 finally woke up, and I realized it was getting out of
21 hand, I did the best I could, I self-surrendered. I
22 didn't want to go any further beyond where, you know,
23 the amount of trouble I was already in.

24 And I admit, Your Honor, I had that disease of
25 addiction, and I want to get back into that drug

1 program again, and, you know, rehabilitation. And if
2 it has to go and have incarceration, then fine, so be
3 it. I have -- but I would like the court to help me.

4 That's it, Your Honor.

5 THE COURT: All right. Thank you.

6 This matter submitted, counsel?

7 MR. BLACK: Yes, Your Honor.

8 MR. CIVILLE: Yes, Your Honor.

9 THE COURT: All right, thank you.

10 Mr. Su, I listened to the words that you have
11 said and read your records, and I have a couple of
12 comments before I pronounce the sentence here today.

13 First of all, I appreciate the fact that
14 you're an intelligent individual, you have the
15 intelligence to do anything you want to do; it's
16 obvious at least from an educational standpoint. I
17 would hope that you would utilize that intelligence in
18 a way to better yourself rather than let yourself fall
19 down, fall backwards.

20 You've made a great stride, in my opinion, in
21 that you accepted responsibility for something, and
22 that is, you admitted to having the disease of
23 addiction. That is usually a big factor in people like
24 yourself who are intelligent who are involved in these
25 types of activities. But once you make that admission

1 and understanding, then things can move forward; it
2 can't until that time. You have to accept
3 responsibility for your actions. You're smart enough
4 to know that if you're, whatever happens with your wife
5 wouldn't let you in the house, your mother won't,
6 you're not accepted by anyone, that happens to people
7 all day long, but they don't turn to a life of crime or
8 don't get involved in drugs and different things,
9 especially those that have the intelligence.

10 What I would hope that you would do the next
11 time you get into that down period is, rather than go
12 to those who you think accept you but only accepting
13 you for a temporary period of time because you've got
14 something that they want, namely your money, so that
15 you can be involved in this activity again, you will
16 turn to someone for support, not just your attorney
17 when it's too late, but find some other support group,
18 because you understand what it's about. I can't
19 believe that you can't, at least when that comes to
20 your mind, you make a decision. I'll tell you what, if
21 you make the decision next time, you're just going to
22 go to prison and for a longer period of time. And if
23 that makes you feel better, it's worth it to you at
24 that time, then you go right ahead. But I don't think
25 it is, and I would hope that you would start using your

1 intelligence for some -- something that will help
2 benefit you in the future.

3 That having been said, in accordance with the
4 Sentencing Reform Act of 1984, it's the judgment of
5 this court that supervised release previously imposed
6 will be revoked. I'm ordering that Johnny Wu Su be
7 ordered to serve a term of imprisonment of 30 months.

8 While in prison, he is to participate in a
9 drug treatment program approved by the Bureau of
10 Prisons.

11 Is there a request for a recommendation,
12 Mr. Civile?

13 MR. CIVILLE: In Northern California,
14 preferably in the bay area, Your Honor.

15 THE COURT: I'll make a recommendation of an
16 institution in Northern California, subject to this
17 defendant's security classification and space
18 availability as determined by the Bureau of Prisons.

19 Upon release, Mr. Su will be placed on 66
20 months of supervised release, during which he shall
21 obey all federal, state, and local laws; comply with
22 all conditions of release set forth by the sentencing
23 commission and adopted by this court; refrain from
24 unlawful use of any controlled substance; and will
25 submit to one drug test 15 days after release, at least

1 two thereafter, not to exceed eight per month.

2 To participate in a substance abuse treatment
3 program approved by the probation office for narcotic
4 and alcohol dependency. You will also participate in
5 testing for detection of substance abuse, and will make
6 co-payment in the amount not to exceed \$25 per month
7 payable to the U. S. Probation office. Will refrain
8 from the use of alcohol, and submit to testing for use
9 of alcohol.

10 Will obtain and maintain gainful employment.
11 Will report to the U. S. Probation officer once a week
12 during the time he is employed and there after provide
13 proof that he is actively seeking employment.

14 Comply with all other previously imposed
15 conditions of this court.

16 In imposing this sentence, the court finds
17 that this is a fair, just, and reasonable sentence and
18 a sentence that is sufficient but not greater than
19 necessary to comply with the purposes set for
20 sentencing.

21 Mr. Su, as I have indicated, from his actual
22 characteristics, that this defendant is a very
23 intelligent individual who for some reason falls off
24 the wagon, if you will, from time to time and engages
25 in conduct which is not only harmful to himself, but

1 also to his community, and more specifically to his own
2 family. The court finds that the time that has been
3 imposed is sufficient to punish Mr. Su, but at the same
4 time also provide a deterrence to others from engaging
5 in this type of conduct, and also providing Mr. Su with
6 sufficient tail or period of supervised release after
7 he is released from incarceration that will allow him
8 to have supervision and care that he needs.

9 Counsel, is there anything else?

10 MR. CIVILLE: No, Your Honor.

11 MR. BLACK: No, Your Honor.

12 THE probation officer: Regarding the
13 co-payment not to exceed \$25, you stated payable to the
14 U. S. Probation office?

15 THE COURT: Payable as directed by the
16 probation office. Excuse me.

17 If nothing else, then this defendant will
18 remain in the custody of the United States marshal
19 pending the return to the Bureau of Prisons forthwith.

20 MR. CIVILLE: Thank you, Your Honor.

21 MR. BLACK: Thank you, Your Honor.

22 THE COURT: We're in recess.

23 (Proceedings concluded at 12:20 p.m.)

24 * * *

25

CERTIFICATE OF REPORTER

CITY OF AGANA)
) ss.
TERRITORY OF GUAM)

I, Wanda M. Miles, Official Court Reporter
of the District Court of Guam, do hereby certify the
foregoing pages 1-20, inclusive, to be a true and
correct transcript of the digital recording made and
transcribed by me of the within-entitled proceedings
at the date and time therein set forth.

Dated this 22nd day of November, 2006.

Wanda M. Miles

Wanda M. Miles
Official Court Reporter
District Court of Guam